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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 UNITED STATES OF AMERICA,)	No.
)	
14 Plaintiff,)	PLEA AGREEMENT
)	
15 v.)	
)	
16 BRION SCOTT MCKENNA,)	
)	
17 Defendant.)	
18)	

19 I, BRION SCOTT MCKENNA, and the United States Attorney's Office for the Northern
20 District of California and the Fraud Section of the Criminal Division of the Department of Justice
21 (hereafter "the Government") enter into this written plea agreement (the "Agreement") pursuant
22 to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

23 The Defendant's Promises

24 1. I agree to plead guilty to the sole count in the above-captioned information,
25 charging me with manipulation of the price of a commodity in interstate commerce, in violation
26 of 7 U.S.C. § 13(a)(2). I agree that the elements of the offense and the maximum penalties are as
27 follows:
28

PLEA AGREEMENT

Elements:

(1) I had the ability to influence the market price of natural gas in interstate commerce;

(2) the published index price of natural gas was artificial in that it did not reflect the legitimate forces of supply and demand;

(3) my conduct was a cause of the artificial price; and

(4) I intended to cause the artificial price.

Penalties:

a. Maximum prison sentence: 5 years

b. Maximum fine: \$500,000

c. Maximum supervised release term: 3 years

d. Mandatory special assessment: \$100

e. Restitution: Up to the amount of the loss

2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that the following facts are true:

Background

Williams Energy Marketing and Trading (“Williams”), a subsidiary of The Williams Companies, is located in Tulsa, Oklahoma. Williams trades a number of different commodities, including natural gas. The natural gas trading group has three primary goals: (1) to ensure physical delivery of natural gas to customers; (2) to hedge against adverse price fluctuations in the market; and (3) to take speculative positions that involve more risk but have the potential to generate high profits. To achieve these goals, traders work with several different natural gas products. Physical trades call for the delivery of natural gas to specific locations. Physical natural gas products include next day gas (to flow the next day), baseload gas (to flow throughout the next month), and term gas (to flow for any designated length of time beyond 30 days). In contrast, financial trades generally are entered without either party to the transaction intending to take delivery of any natural gas. Financial trades can be entered on the New York Mercantile Exchange (called futures contracts) or off-exchange directly between companies (called forward

1 contracts). Financial trades can be used both to speculate and to hedge against price risk in the
2 physical markets. Regardless of the type of transaction, the counter-parties can agree to any
3 price, but often contract prices are tied to published index prices, described below. Both monthly
4 and daily indices are published by a number of different industry newsletters. Monthly indices
5 are published by Inside FERC's Gas Market Report ("Inside FERC") and NGI's Bidweek Survey
6 ("NGI"), among others, on the first business day of each month. Natural gas prices are published
7 for dozens of locations throughout the United States where physical natural gas can be purchased
8 and sold. The publications calculate the monthly index prices using trade data they collect from
9 natural gas traders during the last week of the month. In the natural gas industry, the last week of
10 the month is called "bid week." It was my understanding that the index price at any given
11 location usually represented a volume-weighted average price for baseload gas bought and sold at
12 that location at a fixed price during the most recent bid week.

13 I began working for Williams in August 2000. From approximately August 2000 through
14 October 2002, I was the basis trader for Williams' East Desk for natural gas trading. As a basis
15 trader, I was responsible for buying and selling natural gas products to take advantage of the
16 difference between the price of a physical natural gas contract at a particular location and the
17 price of a standard "Natural Gas" contract traded on the New York Mercantile Exchange. During
18 my employment at Williams, basis traders also were responsible for reporting to the index
19 publications, even though Williams' physical traders executed most of the fixed price, baseload
20 transactions that the indices used in calculating index prices. I began reporting trade data to
21 Inside FERC and other gas indices in approximately October 2000.

22 Manipulation of Natural Gas Index Prices

23 I understand and agree that natural gas is a commodity as defined in Title 7, United States
24 Code, Section 1a(4) and that natural gas flows through pipelines that cross state lines, thereby
25 affecting interstate commerce. As the basis trader for Williams' East Desk, I was responsible for
26 reporting trades negotiated during bid week at certain locations in the East to Inside FERC and
27 NGI for these publications to use in calculating the first of month indices. From approximately
28 mid-September, 2000 through June 30, 2002, I conspired with others at Williams to report

1 fictitious trades to Inside FERC and to NGI for the purpose of manipulating the published index
2 prices to increase the value or profitability of Williams' natural gas positions. By reporting false
3 trades, I intended to influence the price published by Inside FERC and NGI at each location for
4 which I reported. To the extent that my false trades were included in the index calculations, the
5 published index prices did not reflect the legitimate forces of supply and demand.

6 When I reported to the index publications, I attempted to skew the published index prices
7 in the direction that would result in a benefit to one or more entities within the Williams
8 Companies. I knew whether my basis positions would benefit from high or low published index
9 prices at the various locations where I traded, and the physical traders similarly knew how their
10 positions would be affected by the published index prices. In furtherance of the conspiracy, the
11 physical traders often indicated to me whether their positions would benefit from high or low
12 published index prices at the locations where they traded.

13 To achieve the goals of the conspiracy, most of the trades I reported were deliberately
14 fabricated. At the end of each bid week, I would review daily position reports for the Natural
15 Gas East Desk to determine which positions would benefit from a high or low index price. I
16 would then enter fabricated trades in an Excel spreadsheet. Routinely, I would then circulate the
17 spreadsheet containing the fictitious trades for input from other traders. When I first started
18 working as a basis trader at Williams, my supervisor directed me to talk to the individual who
19 had been the basis trader for the East Desk before me, and my predecessor taught me how to
20 complete and submit the spreadsheet with fictitious trades designed to benefit Williams'
21 positions. Finally, I would fax or e-mail the completed spreadsheet to Inside FERC and other
22 publications. For the false trades I included in the spreadsheet, the reported prices and volumes
23 did not represent any actual trades executed by Williams during the relevant bid week. I knew
24 that the publications were soliciting only fixed price, baseload trades executed by Williams
25 during bid week. On at least one occasion, when either my reported trades or those of others
26 were questioned by Inside FERC, I concealed the fact that these reported trades were fictitious.

27 I have reviewed Inside FERC's calculations for its February 2001 index prices, and I have
28 concluded that I successfully manipulated the index prices of natural gas on February 1, 2001 at

1 at the following locations: Columbia Gas Transmission Corp. pipeline at Appalachia; Florida
2 Gas Transmission Co. pipeline at Zones 2 and 3; Natural Gas Pipeline Co. of America pipeline at
3 Louisiana; Transcontinental Gas Pipeline Corp. at Zone 2; and Transco Zone 6 Market Center. I
4 intended to manipulate the February 1, 2001 index prices of natural gas at these locations, and
5 but for the false data that I submitted during bid week in January 2001, the index calculations for
6 these locations would have been different.

7 3. I agree to give up all rights that I would have if I chose to proceed to trial,
8 including the rights to a jury trial with the assistance of an attorney; to confront and cross-
9 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise
10 any other Fourth or Fifth Amendment claims; to any further discovery from the Government; and
11 to pursue any affirmative defenses and present evidence. I waive any venue defenses that I might
12 have in this case, and I consent to the disposition of this case in the Northern District of
13 California.

14 4. I agree to give up my right to appeal my conviction, the judgment, and orders of
15 the Court. I also agree to waive any right I may have to appeal any aspect of my sentence,
16 including any orders relating to forfeiture and/or restitution. As to any matter in which I am
17 cooperating with the Government pursuant to this Agreement, I waive any right I may have to
18 assert the attorney-client privilege to decline to answer questions relating to communications
19 with counsel for any other defendant including a defendant acting pro se, except as to
20 communications where counsel for the other defendant was my attorney of record. I also waive
21 my right to conflict-free representation by any attorney or pro se defendant where a conflict arises
22 from that attorney's or defendant's participation in a joint defense agreement to which I also was
23 a party.

24 5. I agree not to file any collateral attack on my conviction or sentence, including a
25 petition under 28 U.S.C. § 2255, at any time in the future after I am sentenced, except for a claim
26 that my constitutional right to the effective assistance of counsel was violated.

27 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is
28 entered.

1 7. I agree that if restitution is deemed appropriate, the amount will not be limited to
2 the loss attributable to the count to which I am pleading guilty, pursuant to 18 U.S.C. §
3 3663(a)(3). I agree that I will make a good faith effort to pay any fine, forfeiture, or restitution I
4 am ordered to pay. Before or after sentencing, I will, upon request of the Court, the Government,
5 or the U.S. Probation Office, provide accurate and complete financial information, submit sworn
6 statements and give depositions under oath concerning my assets and my ability to pay, surrender
7 assets I obtained as a result of my crimes, and release funds and property under my control in
8 order to pay any fine, forfeiture, or restitution. I agree to pay the special assessment at the time of
9 sentencing.

10 8. I agree to cooperate with the Government before and after I am sentenced. My
11 cooperation will include, but will not be limited to, the following:

- 12 a. I will respond truthfully and completely to any and all questions put to me,
13 whether in interviews, before a grand jury, or at any trial or other
14 proceeding;
- 15 b. I will provide all documents and other material asked for by the
16 Government;
- 17 c. I will testify truthfully at any grand jury, court or other proceeding as
18 requested by the Government;
- 19 d. Should the Government bring a forfeiture action, I will surrender any and
20 all assets acquired or obtained directly or indirectly as a result of my illegal
21 conduct;
- 22 e. I will request continuances of my sentencing date, as necessary, until my
23 cooperation is completed;
- 24 f. I will tell the Government about any contacts I may have with any co-
25 defendants or subjects of investigation, or their attorneys or individuals
26 employed by their attorneys;
- 27 g. I will not reveal my cooperation, or any information related to it, to anyone
28 without prior consent of the Government.

29 9. I agree that the Government's decision whether to file a motion pursuant U.S.S.G.
30 § 5K1.1, as described below at paragraph 16 if this Agreement, is based on its sole and exclusive
31 decision of whether I have provided substantial assistance and that decision will be binding on
32 me. I understand that the Government's decision whether to file such a motion, or the extent of
33 the departure recommended by any motion, will not depend on whether convictions are obtained

1 in any case. I also understand that the Court will not be bound by any recommendation made by
2 the Government.

3 10. I agree not to commit or attempt to commit any crimes before sentence is imposed
4 or before I surrender to serve my sentence; violate the terms of my pretrial release (if any);
5 intentionally provide false information or testimony to the Court, the Probation Office, Pretrial
6 Services, or the Government; or fail to comply with any of the other promises I have made in this
7 Agreement. I agree that, if I fail to comply with any promises I have made in this Agreement,
8 then the Government will be released from all of its promises, but I will not be released from my
9 guilty plea.

10 11. If I am prosecuted after failing to comply with any promises I made in this
11 Agreement, then: (a) I agree that any statements I made to any law enforcement or other
12 government agency or in Court, whether or not made pursuant to the cooperation provisions of
13 this Agreement, may be used in any way; (b) I waive any and all claims under the United States
14 Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal
15 Rules of Evidence, or any other federal statute or rule, to suppress or restrict the use of my
16 statements, or any leads derived from those statements; and (c) I waive any defense to any
17 prosecution that it is barred by a statute of limitations, if the limitations period has run between
18 the date of this Agreement and the date I am indicted.

19 12. With respect to this plea, I agree that this Agreement contains all of the promises
20 and agreements between the Government and me, and I will not claim otherwise in the future.

21 13. I agree that this Agreement binds the U.S. Attorney's Office for the Northern
22 District of California and the Fraud Section of the Criminal Division of the Department of Justice
23 only, and does not bind any other federal, state, or local agency.

24 The Government's Promises

25 14. The Government agrees not to file or seek any additional charges against the
26 defendant that could be filed as a result of the investigation that led to the pending information.

27 15. The Government agrees not to use any statements provided by the defendant
28 pursuant to this Agreement against him, unless the defendant fails to comply with any promises in

1 this Agreement. The Government may, however, provide the defendant's statements to, or require
2 the defendant to submit to an interview by, any federal or state agency, or require him to provide
3 testimony in any federal or state proceeding, so long as his statements may not be used against
4 him. The Government may also inform the Court and the U.S. Probation Department about the
5 full extent of the defendant's criminal activities in connection with the calculation of the
6 Sentencing Guidelines.

7 16. If, in its sole and exclusive judgment, the Government decides that the defendant
8 has cooperated fully and truthfully, provided substantial assistance to law enforcement authorities
9 within the meaning of U.S.S.G. § 5K1.1, and otherwise complied fully with this Agreement, it
10 will file with the Court a motion under § 5K1.1 and/or 18 U.S.C. § 3553 that explains the nature
11 and extent of the defendant's cooperation and recommends a downward departure.

12 17. Based on the information now known to it, the Government will not oppose a
13 downward adjustment of three levels for acceptance of responsibility under U.S.S.G. § 3E1.1.

14 The Defendant's Affirmations

15 18. I confirm that I have had adequate time to discuss this case, the evidence, and this
16 Agreement with my attorney, and that he has provided me with all the legal advice that I
17 requested.

18 19. I confirm that while I considered signing this Agreement and, at the time I signed
19 it, I was not under the influence of any alcohol, drug, or medicine.

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1 20. I confirm that my decision to enter a guilty plea is made knowing the charges that
2 have been brought against me, any possible defenses, and the benefits and possible detriments of
3 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no one
4 coerced or threatened me to enter into this Agreement.

5
6 Dated:

7 BRION SCOTT MCKENNA
Defendant

8
9 KEVIN V. RYAN
United States Attorney

10
11 Dated:

12 KESLIE STEWART
Special Assistant United States Attorney

13
14 JOSHUA HOCHBERG
Chief, Fraud Section
Criminal Division
U.S. Department of Justice

15
16
17
18 Dated:

19 ROBERTSON T. PARK
Assistant Chief, Fraud Section

20 EUGENIA A.P. COWLES
Trial Attorney, Fraud Section

21
22 I have fully explained to my client all the rights that a criminal defendant has and all the
23 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement
24 and all the rights he is giving up by pleading guilty, and, based on the information now known to
25 me, his decision to plead guilty is knowing and voluntary.

26
27 Dated:

28 STEPHEN A. MANSFIELD
ROBERT B. HUMPHREYS
Attorneys for Defendant